Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	

COMMENTS OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

L. Marie Guillory Jill Canfield

Its Attorneys

4121 Wilson Boulevard, 10th Floor Arlington, VA 22203 (703) 351-2000

TABLE OF CONTENTS

		PAGE
<u>SUM</u>	MARY	iii
<u>I.</u>	<u>INTRODUCTION</u>	2
<u>II.</u>	RURAL TELEPHONE COMPANIES ARE UNIQUELY SITUATED TO PROVIDE QUALITY WIRELESS SERVICE TO RURAL AREAS	3
III.	THE COMMISSION SHOULD ESTABLISH A BIDDING CREDIT AVAILABLE TO RURAL TELEPHONE COMPANIES.	4
	A. Rural Telcos Lack Unfettered Access to Capital for Wireless Operation	<u>ns</u> 5
	B. A Bidding Credit Available to Rural Telephone Companies is Appropri	riate . 6
	C. The Commission Should Not Adopt a Rural Service Bidding Credit M After the Tribal Lands Bidding Credit	odeled 8
<u>IV.</u>	"RURAL" SHOULD BE DEFINED ACCORDING TO RSAs	9
<u>V.</u>	SMALL GEOGRAPHIC SERVICE AREAS ARE BEST SUITED FOR PROMOTING SERVICE TO RURAL AREAS	9
<u>VI.</u>	THE COMMISSION SHOULD DO MORE TO ENCOURAGE LARGE LICENSEES TO PART WITH UNUSED SPECTRUM	10
	A. There is Little Incentive for Large Carriers to Participate in Partitionin Disaggregation Arrangements with Rural Telephone Companies	
	B. The Commission's Performance Requirements Must Be Strengthened.	12
VII	CONCLUSION	13

SUMMARY

The National Telecommunications Cooperative Association (NTCA) is excited by the Commission's decision to reexamine its policies and rules to ensure that people living in rural areas have access to spectrum-based services and that rural telephone companies have opportunities to obtain spectrum.

The rural telephone companies represented by NTCA have the unique desire and ability to provide wireless service to rural America, a fact acknowledged by Congress when it enacted Section 309(j) of the Act. Section 309(j) tells the Commission that it must provide spectrum opportunities to rural telephone companies. Right now, there are no programs or incentives specifically targeted at rural telephone companies and rural telephone companies are finding it difficult to compete against large carriers at auction. The Commission must do more to enable rural telephone companies to obtain spectrum and participate in the provision of spectrum-based services.

A bidding credit specifically tailored to rural telephone companies is appropriate and necessary. Also, since small license territories are more affordable at auction and will encourage participation by rural telephone companies, there should be a presumption that any time more than one block of spectrum is available in an auction, a portion of the spectrum will be auctioned according to small geographic areas.

Also, licensees of large service territories have no reason to part with unused rural spectrum and every incentive to hold onto it. To encourage partitioning and disaggregation, the Commission's rules should impose stricter build out requirements and the threat of "use it or lose it."

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	
Services to Rural Areas and Promoting)	WT Docket No. 02-381
Opportunities for Rural Telephone Companies)	
To Provide Spectrum-Based Services)	

COMMENTS OF THE

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in the above referenced proceeding. NTCA is a not-for-profit association established in 1954. It represents more than 500 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996.²

NTCA applauds the Commission's efforts in this Notice of Inquiry (NOI) and looks forward to having a dialogue with the Commission to help it develop polices and auction rules that will better promote service to rural America and provide opportunities for rural telephone companies. NTCA urges the Commission to consider the following: (1) Rural telephone companies are uniquely situated to provide quality wireless service to rural areas; (2) A bidding credit available to rural telephone companies is appropriate and

² 47 U.S.C. § 153(37).

¹ In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, Notice of Inquiry, WT Docket No. 02-381 (NOI) (released December 20, 2002).

will further Congress's goal of facilitating wireless service to rural consumers; (3) "Rural" should be defined according to RSAs; (4) Whenever more than one block of spectrum is available in an auction, there should be a presumption that a portion of the spectrum will be auctioned according to small geographic areas; and (5) Large licensees should be forced to part with unused spectrum.

I. INTRODUCTION

It is clear that rural spectrum issues were a high priority for Congress when it passed the Telecommunications Act of 1996. Congress requires the Commission to encourage the development and rapid deployment of new technologies and services to those residing in rural areas.³ The rural message is reinforced and the role of rural telephone companies is emphasized in Section 309(j)(3)(B) which tells the Commission to disseminate spectrum licenses to a wide variety of applicants, including specifically rural telephone companies.⁴ Rural telephone companies are again specified in Section 309(j)(4)(D) which requires the Commission to ensure that rural telcos are given the opportunity to acquire spectrum and provide spectrum-based services.

The Commission lists various policies intended to comply with the Section 309(j) mandates and "to encourage the provision of spectrum-based services to rural areas and the participation of rural telcos in the competitive bidding for spectrum licenses." Listed policies include the following: (1) the availability of small business bidding credits; (2) the designation of various sizes of geographic service areas for spectrum licenses; (3) the opportunity to obtain licenses through service area partitioning and

_

³ Section 309(j)(3)(A).

⁴ Section 309(j)(3)(B).

³ NOI, ¶ 3.

spectrum disaggregation arrangements with existing licenses; and (4) the adoption of construction benchmark performance requirements.

While the listed policies are tools that are useful to fulfilling the rural need, all are available to the general bidding population. The Commission currently has no policies or rules specifically tailored to provide wireless service to rural residents or to provide spectrum opportunities to the rural telephone companies that serve them. This NOI provides an exciting opportunity for the Commission to reexamine its policies to consider what is working and what is not and to recommend policy changes that will fill in the rural gaps in current Commission policy.

II. RURAL TELEPHONE COMPANIES ARE UNIQUELY SITUATED TO PROVIDE QUALITY WIRELESS SERVICE TO RURAL AREAS

NTCA's members are a diverse group of telephone companies providing state of the art service in rural America. All NTCA members are headquartered in the locality where they provide service and have strong ties to the community. In most rural communities, the telco is the largest or one of the largest businesses in town. The rural telco's prosperity is tied to the community's prosperity and future. Rural telcos are motivated not only by the bottom line, but also by a civic duty to ensure the viability of their community as this country moves toward a wireless future.

Whether the technology is wired or wireless, certain economic disadvantages persist in rural America. It is more expensive for telecommunications providers to serve rural areas than urban areas. Fewer subscribers and lower subscriber density translate into higher costs. Also, certain regions of the nation suffer from unforgiving terrain. These are service obstacles that have proven insurmountable for the large carriers. Rural

telephone companies exist because the large carriers were unwilling or unable to serve their communities.

The economics of serving rural communities have not changed. Driven solely by profit, large carriers and smaller carriers without ties to rural communities understandably concentrate their build out efforts on the more profitable urban areas. They must recoup their investment and answer to their stockholders. Rural telephone companies, in contrast, must answer to their communities. If local rural telephone companies are unable to obtain wireless licenses the rural residents may go without service.

Many in the industry may point to competition as the rural solution, but competition for competition's sake may prove disastrous for a rural community. Pushing competition into an area that cannot support multiple providers causes all providers and their subscribers to suffer. If policies are designed to introduce four or five providers of a competing service into an area that can support no more than one or two, there is the substantial risk that all will fail. As the companies struggle for their survival, the customer loses as none of the companies can afford to upgrade service or equipment.

The policies recommended as a result of this NOI should focus on ensuring that rural communities have access to high quality, modern wireless service. The Commission should ensure that those companies with ties to the rural communities and a strong commitment to providing quality service have access to spectrum. If rural telephone companies have access to spectrum, the rural communities will be served.

III. THE COMMISSION SHOULD ESTABLISH A BIDDING CREDIT AVAILABLE TO RURAL TELEPHONE COMPANIES

Congress recognized the unique ability of rural telephone companies to provide spectrum-based service to rural America when it directed the Commission to disseminate

spectrum licenses to a wide variety of applicants, including specifically rural telephone companies. It is no accident that directives involving ensuring service to rural residents and directives involving opportunities for rural telephone companies all appear in Section 309(j). Congress recognized that rural telephone companies have the incentive, desire and ability to provide wireless service to their communities.

Unfortunately, until now, the Commission has all but ignored the rural telephone company. Every preference provided to rural telephone companies has been stripped away on the basis that rural teleos lack the historical difficulty in obtaining capital of other designated entities. However, rural telephone companies are designated entities because of the service they provide, not because of their financing. The Commission's argument is misguided, ignoring that Section 309(j)(3)(A), Section 309(j)(3)(B) and Section (j)(4)(D) are all designed to ensure rural service.

The Commission's statement is also untrue. Rural telephone companies do have difficulty in obtaining financing for wireless projects.

A. Rural Telcos Lack Unfettered Access to Capital for Wireless Operations

The overall downturn in the economy has hit rural telecommunications companies especially hard. It is difficult to make a lender or investor put up the capital for a rural wireless project with its limited possible returns, when the large urban carriers are struggling. In NTCA's recent wireless survey, eighty-four percent of respondents with experience obtaining financing described the process as "somewhat difficult" to "virtually impossible."

⁶ NTCA's 2002 Wireless Survey Report, available at www.ntca.org.

CoBank has currently invested \$3 billion in rural areas, \$22 million of that is in pure rural ILEC businesses. However, CoBank last financed a rural telephone company's stand-alone wireless operation in 2001. Robert West, Division Manager for Communications Lending Division of CoBank, stated that CoBank will not finance the build out of a new rural wireless license.

The NOI references the availability of below-market rate lending through the Department of Agriculture's Rural Utilities Service (RUS) and Section 6103 of the Farm Security and Rural Investment Act of 2002. However, there are multiple restrictions on that funding that make it difficult, if not impossible, for many rural carriers seeking to finance stand-alone wireless projects to take advantage of those programs.

If a rural telephone company is willing and able to use its ILEC operations as collateral for a wireless venture, obtaining financing remains difficult. The rural telephone company often lacks enough collateral to secure the financing necessary to obtain a license and then build it out. Wireless license areas tend to be larger, and in some cases much larger, than rural telephone companies' service areas. These wireless territories tend to go for tremendous amounts at auction. Typically, without bidding credits, a small rural telephone company simply lacks the collateral necessary to obtain the financing to compete at auction. Bidding credits are essential to lowering the total cost of a license and the amount of collateral needed to obtain financing.

В. A Bidding Credit Available to Rural Telephone Companies is Appropriate

The Commission questions whether it should adopt a bidding credit specifically for rural telcos. ⁷ NTCA believes that it should. ⁸ The Commission was given very

Comments, February 3, 2003

⁷ NOI, ¶ 16.

specific directives by Congress. It is to ensure that rural telcos are given the opportunity to acquire spectrum and provide spectrum-based services. It is also to disseminate spectrum licenses to rural telephone companies. 10

The small business bidding credits typically available today were adopted to encourage broad participation in spectrum auctions. ¹¹ They were not adopted to encourage rural telephone company participation in spectrum auctions. However, when it adopted Section 309(j) of the Act, Congress recognized the unique desire and ability of rural telephone companies to provide wireless service to rural areas and directed the Commission to ensure that rural telephone company opportunities were available. Offering a bidding credit to all so-called small businesses does little to specifically further rural deployment or the rural objections of 309(j). The Commission should act now and adopt a bidding credit specifically tailored to rural telephone companies.

The Commission attempts to demonstrate that a significant portion of rural telcos that have participated in spectrum auctions have received small business bidding credits, perhaps to imply that a rural telco bidding credit is unnecessary. It states that in the recent auction for licenses in the lower 700 MHz band, 77 percent of all winning rural telco bidders received a bidding credit.¹² This statistic ignores the fact that more than 20 percent of winning rural telcos did not receive a bidding credit and that perhaps many of those that would not qualify for a bidding credit would not participate in an auction.

⁸ It is NTCA's position that if small business credits are available in an auction, the rural telephone company bidding credit should be offered in addition to, and not in place of, the small business credits. ⁹ 309(j)(4)(D).

¹⁰ 309(j)(3)(B).

¹¹ NOI, ¶ 4.

¹² NOI, ¶ 6.

NTCA's 2002 wireless survey¹³ indicated that although 84 percent of respondents felt that their ability to offer wireless service affects their standing in the community as a telecommunications carrier of choice, one-half said they have no plans to participate in future spectrum auctions because they cannot compete with large carriers at auction.¹⁴ Obviously the majority of rural telcos do not view the small business bidding credit as the rural solution. A rural telephone bidding credit is necessary.

The Commission questions what criteria it should use to determine eligibility for a rural telephone company bidding credit and whether it is appropriate to adopt a bidding credit for all rural telcos irrespective of how large or well financed they are. 15 NTCA believes the bidding credit should be offered to all "rural telephone companies" as defined in 47 U.S.C. §153(37). This is an easy to use measure set by Congress. It fulfills the objectives and mandates of Section 309(j) and it is a measure that cannot be altered or abused.

C. The Commission Should Not Adopt a Rural Service Bidding Credit Modeled After the Tribal Lands Bidding Credit

The Commission questions whether it should adopt a rural service bidding credit modeled after the tribal lands bidding credit. It should not. The tribal lands bidding credit is available to any winning bidder who commits to use its license(s) to deploy facilities and provide services to unserved or underserved federally recognized tribal lands. The bidding credit was established as a desperate measure to provide service to

¹³ See, NTCA 2002 Wireless Survey Report, www.ntca.org.

¹⁴ NTCA's wireless survey took place before the Lower 700 MHz auction. NTCA member participation was high in that auction due to favorable auction rules. It is entirely possible that the number of companies with no plans to participate in future auctions would be much higher than one-half if the Lower 700 MHz auction was excluded from the survey.

¹⁵ NOI, ¶ 17.

areas with a documented lack of basic telecommunications service.¹⁶ In fact, the credit is only available for tribal lands either unserved by any telecommunications carrier or that have a wireline subscription equal to or below 70 percent.

Rural telephone companies provide a superior level of service, despite the economic and geographic obstacles involved with serving sparsely populated areas.

Rural areas generally do not lack basic telecommunications service and are not comparable to tribal lands.

The bidding credit should be offered to only those providers committed to providing the most modern wireless services as an enhancement to the wireline service already available in rural areas and to fulfill Congress's objectives in enacting Section 309(j) of the Act. The bidding credit should be offered to rural telephone companies.

IV. "RURAL" SHOULD BE DEFINED ACCORDING TO RSAs

In its NOI, the FCC asks for comment on how the Commission should define "rural areas." For purposes of consistency and practicality, NTCA believes that Rural Service Areas (RSAs) are the appropriate geographic area to use. RSAs are already used for the auctioning of wireless spectrum and they effectively separate rural from urban areas.

V. SMALL GEOGRAPHIC SERVICE AREAS ARE BEST SUITED FOR PROMOTING SERVICE TO RURAL AREAS

Small service areas, such as MSAs and RSAs, enhance the participation and success of rural telephone companies in the competitive bidding process. Rural teleo success subsequently enhances the provision of spectrum-based services to rural areas.

9

¹⁶ Extending Wireless Telecommunications Services to Tribal Lands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-266, FCC 00-209 (rel. June 30, 2000).

Small license territories are more affordable than large. If small carriers with ties to rural communities can afford spectrum, they will provide spectrum-based service to the rural consumers. Therefore, any time more than one block of spectrum is available in an auction, there should be a presumption that a portion of the spectrum will be auctioned according to small geographic areas. 18

As described above, it is more expensive to serve rural areas than urban areas, and the returns on the investment are less. Driven solely by profit, large carriers and smaller carriers without ties to rural communities understandably concentrate their build out efforts on the more profitable urban areas. They must recoup their investment and answer to their stockholders. Rural telephone companies, in contrast, must answer to their communities.

Rural telephone companies simply cannot afford to compete in auctions that license spectrum according to large geographic territories. They lack the resources of large companies interested in serving the urban territory. Rural areas will only achieve an acceptable level of service if small carriers are given the opportunity to compete at auction by bidding on small geographic territories.

VI. THE COMMISSION SHOULD DO MORE TO ENCOURAGE LARGE LICENSEES TO PART WITH UNUSED SPECTRUM

Recent Commission auction rules permit auction winners to partition their geographic service territory or disaggregate their spectrum. These rules were designed to encourage more efficient use of spectrum, with less of it remaining unused, and to

WT Docket No. 02-381

FCC 02-325

¹⁸ See, NTCA's Comments, Spectrum Policy Task Force Report, ETDocket No. 02-135 (filed Jan. 27,

provide smaller businesses with spectrum opportunities even when they are unable to compete at auction for spectrum.

A. There is Little Incentive for Large Carriers to Participate in Partitioning or Disaggregation Arrangements with Rural Telephone Companies

While carriers may partition or disaggregate their licenses, they are not required to do so. In fact, large carriers have shown a reluctance to part with spectrum, even if unused. The vast majority of NTCA's members are interested in entering into partitioning and disaggregation arrangements with larger carriers, but few have been successful. The large carrier may feel that the unused spectrum will be needed in the future, that the investment is worth keeping because an intact license is more valuable, or that the benefits of a deal with small carriers are not worth pursuing.

There is little incentive for large carriers to negotiate with small carriers for partitioning or disaggregation. The Commission has a "substantial service" requirement as its construction requirement. Under this approach licensees need merely show that they provide "substantial service" to either a geographic service area or to the population within the geographic service area within a specific period of time. Therefore, a licensee may get its license renewed by serving just a portion of the urban area within its licensed territory. It thus provides service to a "substantial" portion of the population, while completely ignoring and providing no service to the vast majority of the license territory, *i.e.*, the rural territory. Even the Commission admits that the Commission has rarely found that a CMRS carrier has failed to meet its performance requirements. ¹⁹ There is no penalty for providing minimal service and every incentive to retain unused spectrum.

¹⁹ NOI, ¶ 9.

B. The Commission's Performance Requirements Must Be Strengthened

Stricter build out requirements and "use it or lose it" rules applied to future spectrum licenses would improve the level of service available in rural areas and provide additional opportunities for rural telephone companies to acquire spectrum.

Large carriers would have the incentive to part with unused spectrum if the failure to do so could result in license revocation. A carrier should be told that it must either build out the service area or meet its construction requirements through partitioning or disaggregation, or risk forfeiting the license. Given the substantial investment involved in obtaining a license, a licensee will do everything possible to retain its rights. The rural consumer is served either by the large carrier or by another carrier obtaining the spectrum rights from the large carrier.

In conjunction with stricter build out requirements, the Commission should adopt a "use it or lose it" approach. At some point before the end of a license term, there should be a rebutable presumption that someone else may provide service to and claim as part of its service territory the unserved portion of a licensee's service area. The original licensee would be provided the opportunity to retain the service territory by excusing its non-service due to a lack of available equipment. The original licensee would also be given a right of first refusal whereby it could vow to serve the unserved territory within a set period of time, thus retaining its entire spectrum asset. However, if the failure to build is unexcused due to a lack of equipment, or if the original licensee does not make a binding promise to build out the area, another provider may provide the service and claim the area as part of its licensed territory. This furthers the objective of providing service to all consumers.

VII. CONCLUSION

The policies recommended as a result of this NOI will substantially affect the future of wireless service in rural America. Congress recognized the need for rural communities to have access to spectrum-based services and the unique ability of rural telephone companies to fulfill that need. It is imperative that the Commission's recommendations in this proceeding be consistent with the rural service objectives of Section 309(j) of the Telecommunications Act of 1996.

To fulfill the mandates of Section 309(j), the Commission must provide opportunities for rural telephone companies to participate in the provision of spectrum-based services. Bidding credits tailored to rural telephone companies, small geographic license territories and polices that force large carriers to part with unused spectrum are necessary. When rural telephone companies are provided meaningful opportunities to obtain spectrum, rural communities are served.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

By: <u>/s/ L. Marie Guillory</u> L. Marie Guillory

By:/s/ Jill Canfield
Jill Canfield

Its Attorneys

4121 Wilson Boulevard, 10th Floor Arlington, VA 22203 (703) 351-2000

February 3, 2003

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in WT Docket No. 02-381, FCC 02-325 was served on this 3rd day of February 2003 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy Gail Malloy

Chairman Michael Powell Federal Communications Commission 445 12th Street, SW, Room 8-B201 Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy Federal Communications Commission 445 12th Street, SW, Room 8-B115 Washington, D.C. 20554

Commissioner Kevin J. Martin Federal Communications Commission 445 12th Street, SW, Room 8-A-204 Washington, D.C. 20554

Commissioner Michael J. Copps Federal Communications Commission 445 12th Street, SW, Room 8-A302 Washington, D.C. 20554

Qualex International Portals II 445 12th Street, SW Room CY-B402 Washington, D.C. 20554 Commissioner Jonathan Adelstein Federal Communications Commission 445 12th Street, SW, Room 8-C302 Washington, D.C. 20554

Robert Krinsky Federal Communications Commission 445 12th Street, SW, Room 4-B551 Washington, D.C. 20554